

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jean Paul Lozada	Team: Squad #9	CCRB Case #: 201706475	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/24/2017 9:12 PM	Location of Incident: West 47th Street between 9th and 10th Avenues	Precinct: 18	18 Mo. SOL 11/24/2018	EO SOL 11/24/2018	
Date/Time CV Reported Tue, 08/08/2017 4:32 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Tue, 08/08/2017 4:32 PM		

<b>Complainant/Victim</b>	<b>Type</b>	<b>Home Address</b>

<b>Witness(es)</b>	<b>Home Address</b>

<b>Subject Officer(s)</b>	<b>Shield</b>	<b>TaxID</b>	<b>Command</b>
1. POM Ahmed Abdalla	07927	948580	MTN PCT
2. POF Bernice Pacheco	25234	935448	MTN PCT

<b>Officer(s)</b>	<b>Allegation</b>	<b>Investigator Recommendation</b>
A.POM Ahmed Abdalla	Abuse: Police Officer Ahmed Abdalla interfered with § 87(2)(b)'s use of a recording device.	
B.POF Bernice Pacheco	Abuse: Police Officer Bernice Pacheco interfered with § 87(2)(b)'s use of a recording device.	
C.POM Ahmed Abdalla	Abuse: Police Officer Ahmed Abdalla issued a summons to § 87(2)(b)	

### Case Summary

On August 8, 2017, § 87(2)(b) filed this complaint in person at the CCRB.

On May 24, 2017, at approximately 9:12 p.m., § 87(2)(b) "Patrick" § 87(2)(b) exited his apartment building at § 87(2)(b) in Manhattan when he noticed an emotionally disturbed individual in police custody being removed from the § 87(2)(b) across the street in an ambulance. § 87(2)(b) crossed the street and began filming the incident on his phone. PO Ahmed Abdalla of Midtown North Precinct told § 87(2)(b) to back away from the scene, and § 87(2)(b) walked towards 9th Avenue. § 87(2)(b) noticed that the other civilians who were gathered in front of § 87(2)(b) were not asked to move, so he returned to the front of § 87(2)(b). PO Abdalla told § 87(2)(b) to back away again and pointed his flashlight into the lens of § 87(2)(b)'s camera, obscuring the footage (**Allegation A**). § 87(2)(b) complied, walked towards Tenth Avenue, and crossed from the north side to the south side of § 87(2)(b) in the middle of the block. Approximately seven minutes later, PO Abdalla allegedly began staring at § 87(2)(b) who in turn flipped his middle finger at him. PO Abdalla approached § 87(2)(b) pointed his flashlight into the camera again, and asked him for his identification (**Allegation A cont'd**). PO Bernice Pacheco of Midtown North Precinct also pointed her flashlight into § 87(2)(b)'s camera (**Allegation B**). § 87(2)(b) produced his identification, and PO Abdalla wrote him a summons for jaywalking and another summons for disorderly conduct for refusing to disperse (**Allegation C**). These summonses have been dismissed.

§ 87(2)(b) filmed three videos of the incident, which are embedded below and can be found in IA's # 45, 46, and 47, and also in Board Review 01, 02 and 03.



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### Mediation, Civil and Criminal Histories

- Mediation was offered to § 87(2)(b) during his CCRB interview on August 8, 2017. § 87(2)(b) rejected mediation because he was not interested in receiving an apology and did not believe any apology given would be sincere, and he wanted PO Abdalla disciplined.
- As of October 5, 2017, § 87(2)(b) has not filed a notice of claim in regards to this incident (Board Review 04).
- § 87(2)(b)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint in which § 87(2)(b) is involved (Board Review 06).
- PO Abdalla has been a member of the NYPD for seven years and is the subject of nine prior CCRB allegations involving five cases with two substantiated allegations (Board Review 07).
  - In case number 201211620, PO Abdalla was the subject of Abuse: Refusal to Provide Name/Shield Number and Abuse: Retaliatory Summons allegations, both of which were closed as substantiated with charges. The NYPD found PO Abdalla guilty, and he forfeited five vacation days as a result.
- PO Pacheco has been a member of the NYPD for 13 years and is the subject of two prior CCRB allegations involving two cases with no substantiated allegations. § 87(2)(g)

- A request for an AIDED prepared at the incident location was generated, and only the AIDEDs prepared for PO William Ball and PO Robert Holzapfel were provided (Board Review 09, 10). No arrest was effected at the incident location by any officer assigned to the 18<sup>th</sup>/Midtown North Precinct on the incident date (Board Review 11). As such, the identity of the emotionally disturbed person remains unknown, and he is henceforth referred to as “the EDP.”

- § 87(2)(b) stated that when PO Abdalla ordered him to back away from the scene the first time, he asked PO Abdalla for his name and shield number PO Abdalla stated his name, but he did not recall whether PO Abdalla stated his name and shield number. He also stated that when PO Abdalla requested his identification, he asked PO Abdalla for his name and shield number again, and PO Abdalla allegedly did not provide this information and continued to request his identification. In § 87(2)(b)'s first of three videos (Board Review 01), he can be heard asking PO Abdalla for his name, and PO Abdalla responded with his name and shield number. In § 87(2)(b)'s third of three videos, he can be heard asking PO Abdalla for his name, and PO Abdalla stated his name in response. As such, no Abuse; Refusal to Provide Name and/or Shield Number allegation is pleaded against PO Abdalla.
- In § 87(2)(b)'s first of three videos, an unidentified object can be seen covering a portion of the lens while PO Abdalla is ordering § 87(2)(b) to move back. § 87(2)(b) was not sure whether it was his finger or PO Abdalla's finger on the lens, but he noted that he generally avoids covering his lens when he films. § 87(2)(b) stated that he remembered PO Abdalla raising his hand and placing it within inches of the lens during their initial interaction. PO Abdalla could not say what was blocking § 87(2)(b)'s camera lens, and did not believe that he did so with his hand. Because § 87(2)(b) was not sure whether it was himself or PO Abdalla who was blocking the lens, this obstruction is not analyzed under Allegation A.
- PO Abdalla issued § 87(2)(b) a summons for jaywalking. In § 87(2)(b)'s second video (Board Review 02), § 87(2)(b) can be seen crossing West 47<sup>th</sup> Street in the middle of the block after PO Abdalla told him to cross at a crosswalk. Chapter 4, article 04, section (c), subsections (2) and (3) of the Rules of the City of New York state, "No pedestrian shall cross any roadway at an intersection except within a crosswalk," and, "No pedestrian shall cross a roadway except at a crosswalk on any block in which traffic control signals are in operation at both intersections bordering the block," respectively (Board Review 12). § 87(2)(b) was cited under subsection (2). § 87(2)(b), § 87(2)(g)

§ 87(2)(b) stated that when he returned to the scene and PO Abdalla ordered him to back away a second time, PO Abdalla shined his flashlight into the lens of his camera from approximately one to two feet away while he was filming, obscuring his footage. After § 87(2)(b) raised his middle

finger at PO Abdalla from the other side of West 47<sup>th</sup> Street, PO Abdalla crossed the street and approached § 87(2)(b) with his flashlight in his hand. § 87(2)(b) began filming again, and PO Abdalla shined his flashlight into the lens of his camera again.

§ 87(2)(b)'s videos (Board Review 02, 03) corroborate his statement that PO Abdalla obscured his footage with a flashlight on two occasions. In the second of the three videos, PO Abdalla is pointing the flashlight towards § 87(2)(b) from a distance of approximately one arm's length away while ordering him to move back, and he continues to point the flashlight at § 87(2)(b) while § 87(2)(b) is walking away. On this occasion, PO Abdalla pointed his flashlight at § 87(2)(b) for a total of approximately 15 seconds, and he partially obstructed § 87(2)(b)'s footage. The emotionally disturbed person had already been placed in an ambulance when PO Abdalla began shining his flashlight. In the third of § 87(2)(b)'s three videos, PO Abdalla shines his flashlight directly into the lens of § 87(2)(b)'s camera from a very close distance for approximately 32 seconds, and the large majority of the frame is obscured by the light from the flashlight. This video also shows PO Pacheco shining her flashlight into § 87(2)(b)'s lens from a very close distance for approximately six seconds immediately prior to walking away. PO Abdalla and PO Pacheco stop pointing their flashlights at § 87(2)(b) and walk away together after he gave PO Abdalla his identification.



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Before being shown § 87(2)(b)'s footage, PO Abdalla denied taking out his flashlight and shining it at § 87(2)(b)'s camera. He did not remember whether he had taken his flashlight out during his interaction with § 87(2)(b) or whether he ever took out his flashlight to obscure § 87(2)(b)'s recording the incident. After reviewing the second video, PO Abdalla stated that he pointed his flashlight at § 87(2)(b) because he was trying to use it to tell § 87(2)(b) to move back in conjunction with his verbal commands, and that there was no other reason why he used his flashlight on this occasion. After reviewing the third video, he stated that he did not remember why he was shining his flashlight at § 87(2)(b) at this point and that he was not attempting to obstruct § 87(2)(b)'s recording the incident, although he knew that § 87(2)(b) was filming at the time.

Prior to being shown § 87(2)(b)'s videos, PO Pacheco stated that she did not recall whether she had any interaction with § 87(2)(b) on the south side of West 47<sup>th</sup> Street. She acknowledged that she probably had her flashlight out because she usually takes it out at night, and that she aimed her flashlight wherever she needed to illuminate an area in order to ensure her safety. PO Pacheco did not know how close she got to § 87(2)(b) with her flashlight pointed at him; she noted that she was close enough to § 87(2)(b) to tell him to move back, but she did not get "too close" to him. PO Pacheco did not know whether § 87(2)(b) was still filming at this time, and when asked whether her flashlight was still pointed at § 87(2)(b) PO Pacheco replied, "Maybe." PO Pacheco did not know whether the use of her flashlight interfered with § 87(2)(b)'s recording of the incident, but she noted that if it did interfere with his recording, this interference was not intentional. After reviewing the third video, PO Pacheco stated that she shined her flashlight at § 87(2)(b) because it was dark and she could not see what he was doing with his hands. § 87(2)(b) was holding his camera in one hand. PO Pacheco had no recollection of where his other hand was. PO Pacheco did not shine his flashlight at § 87(2)(b) for any other reason. When asked

whether she was aware § 87(2)(b) was filming at the time, PO Pacheco stated that she believed he was filming the whole time, but she did not know for sure because there was no way to know that he was recording.

According to a FINEST Message dated August 6, 2014, serial number 9881632, “Members of the service will not interfere with a person’s use of recording devices to record police interactions. Intentional interference such as blocking or obstructing cameras or ordering the person to cease constitutes censorship and also violates the First Amendment... Mere recording of an incident does not constitute interference.” According to Patrol Guide Procedure 208-03, when a police officer detains a person in a public area, persons who are in the area are permitted to observe the officer’s actions, and these persons may not be arrested or detained for videotaping the encounter “unless the safety of officers or other persons is directly endangered, or the officer reasonably believes they are endangered.” See Board Review 12.

PO Abdalla stated that the only reason he pointed his flashlight at § 87(2)(b) on the north side of West 47<sup>th</sup> Street was to tell § 87(2)(b) to move back in conjunction with his verbal commands. As evidenced in the second video, PO Abdalla had already told § 87(2)(b) to move back when he began shining his flashlight at the camera, and § 87(2)(b) was compliant and walking backwards. PO Abdalla pointing his flashlight at § 87(2)(b)’s camera, in and of itself, does not convey any particular meaning, especially since he pointed it at § 87(2)(b)’s lens as opposed to where he wanted § 87(2)(b) to stand. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b). PO Abdalla also stated that he did not remember why he was shining his flashlight at § 87(2)(b) on the south side of West 47<sup>th</sup> Street and that he was not attempting to obstruct § 87(2)(b)’s recording the incident, although he knew that § 87(2)(b) was filming at the time. Because PO Abdalla knew § 87(2)(b) was filming, was shining his flashlight directly into § 87(2)(b)’s lens from a very close distance (what appears to be less than one arm’s length away), and was unable to explain why he was shining his flashlight at this moment, the preponderance of the evidence suggests that PO Abdalla attempted to obstruct § 87(2)(b)’s footage with his flashlight on the south side of West 47<sup>th</sup> Street.

PO Pacheco stated that the only reason she shined her flashlight at § 87(2)(b) was because it was dark and she could not see what he was doing with his hands. § 87(2)(b) was holding his camera in one hand, and PO Pacheco did not recall where his other hand was, but she believed he was filming at the time. PO Abdalla had already been shining his flashlight at § 87(2)(b) for approximately 26 seconds when PO Pacheco began shining her flashlight at him. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

**Allegation C – Abuse of Authority: Police Officer Ahmed Abdalla issued a summons to**

§ 87(2)(b)

§ 87(2)(b) stated that he exited his apartment building and saw an emotionally disturbed person (EDP) being detained by police officers across the street, and he crossed the street to see what was happening. The EDP did not offer any physical resistance but seemed distraught, as though he did not want to be in handcuffs or detained, and he expressed this vocally. The EDP was “agitated” and “disturbed,” but he did not yell or use profanities. The EDP’s sister, who was also “extremely distraught,” asked the officers to not hurt him anymore. The presence of the officers caused a crowd of civilians to form at the scene because they were parked irregularly in the middle of the street and had their lights flashing. These civilians stood approximately 15 to 25 feet away from the officers, and they were only watching the incident and were not filming. At this point, § 87(2)(b) pulled out his iPhone and started filming the incident. § 87(2)(b) stood in front of § 87(2)(b) and kept “a safe distance” of approximately 15 to 20 feet away from the detainee and the police officers. § 87(2)(b) wanted to inform the detainee of his right to remained silent, and he attempted to get his attention by saying “Sir.” PO Abdalla approached § 87(2)(b) and told him that he needed to back up, and § 87(2)(b) complied. § 87(2)(b) backed up approximately 60 to 70 feet away from the EDP and the officers. However, there remained some civilians, including relatives of the EDP, residents of § 87(2)(b) and neighbors of § 87(2)(b) standing within 15 feet of the police vehicle. This crowd of civilians was not asked to move back, and § 87(2)(b) was the only one who moved away from the scene. Out of concern for the EDP, § 87(2)(b) walked back to where the crowd of people was standing and continued to film from the same spot where he was initially standing. Two to three minutes later, PO Abdalla saw § 87(2)(b) got “in [his] face” again, and told him that he had told him to back up. PO Abdalla told § 87(2)(b) that he could film but said that he was impeding his police investigation. § 87(2)(b) west on West 47<sup>th</sup> Street and said he was backing up, and PO Abdalla said he needed to back up more. § 87(2)(b) complied and continued to back up. At this point, § 87(2)(b) was at the curb and approximately 30 to 40 feet away from the EDP. § 87(2)(b) decided to cross West 47<sup>th</sup> Street to remove himself from the situation because PO Abdalla seemed hostile and aggressive. Approximately seven minutes later, PO Abdalla “locked” eye contact with § 87(2)(b) while seated in the driver seat of his car and stared at him for approximately one minute. § 87(2)(b) then raised his middle finger at PO Abdalla. Immediately thereafter, PO Abdalla exited his vehicle, crossed West 47<sup>th</sup> Street, approached § 87(2)(b) and demanded his identification, and § 87(2)(b) complied. PO Abdalla issued § 87(2)(b) a summons for jaywalking and another summons for disorderly conduct for refusing to disperse (Board Review 13).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) His first video (Board Review 01), which begins at 9:12 p.m. and lasts four minutes and 14 seconds, begins with the EDP standing next to a police car with an officer. The EDP is not moving or saying anything and appears to be restrained by the officer. An ambulance is already on scene, and § 87(2)(b) is speaking to the EDP’s sister and telling her that he is filming her brother for his safety. § 87(2)(b) says “sir” to the EDP, but does not approach him or the officers. Immediately thereafter, PO Abdalla told § 87(2)(b) that he was allowed to film but had to step aside, and § 87(2)(b) complied and walked approximately two to three car lengths east on West 147<sup>th</sup> Street. After standing in this spot for approximately one minute, § 87(2)(b) began slowly walking back to where he originally stood, during which time the EDP is placed in the ambulance. The second video (Board Review 02), which begins at 9:17 p.m. and lasts one minute and 55 seconds, shows § 87(2)(b) standing in approximately the same location near the ambulance and the officers. The back door of the ambulance is closed, and the EMT’s and officers enter the ambulance through

the side door. § 87(2)(b) does not do anything except count how many officers are present. After one minute and 14 seconds, PO Abdalla told § 87(2)(b) to step aside again, and § 87(2)(b) complied and began walking backwards towards 10<sup>th</sup> Avenue, and ultimately stepped into the street and crossed to the south side of West 47<sup>th</sup> Street, where the video ended. The third video (Board Review 03), which begins at 9:26 p.m. and lasts one minute and 18 seconds, shows PO Abdalla crossing to the south side of West 47<sup>th</sup> Street and approaching § 87(2)(b). The first thing PO Abdalla said was, “Why are you acting disorderly right now, sir?” PO Abdalla asked § 87(2)(b) for his identification and said he was causing public alarm and that he had crossed the street in the middle of the block. § 87(2)(b) said, “I flicked you off, and you got out of the car.” After PO Abdalla walked away with § 87(2)(b)’s identification, § 87(2)(b) explained to an unidentified male standing next to him that he had flipped his middle finger at PO Abdalla, who then exited his car. The male said he did not see that.



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Prior to reviewing § 87(2)(b)’s videos, PO Abdalla stated that he responded to the scene after PO William Ball suffered the effects of OC spray being deployed against the EDP inside of § 87(2)(b). § 87(2)(b) approached them as the officers attempted to restrain the EDP outside of § 87(2)(b). The EDP was already handcuffed but continued to resist the officers by kicking his legs. There were approximately four or five other individuals outside the building; but PO Abdalla did not remember what they were doing. § 87(2)(b) came within a distance that was “not safe” to the officers, though PO Abdalla could not say just how close § 87(2)(b) came to him. PO Abdalla told § 87(2)(b) to move back repeatedly, as § 87(2)(b)’s presence was preventing the officers from effectively restraining the EDP. § 87(2)(b) would move back approximately eight feet, but would only stay back momentarily before walking back towards the officers. PO Abdalla did not remember how many times § 87(2)(b) came back to the officers, nor did he remember how many times he told § 87(2)(b) to back away. When asked what § 87(2)(b) specifically did that kept him from performing his duties, PO Abdalla stated that because § 87(2)(b) kept returning to the officers, and because there were other individuals present, he did not know whether § 87(2)(b) knew the people around him or whether one of these individuals might attack the officers. The EDP’s wife also approached the officers, who told her to back up repeatedly. Like § 87(2)(b) she backed up, but then would approach the officers again. This individual was not placed under arrest or issued a summons. PO Abdalla did not ask any other individual to move away from the EDP. PO Abdalla did not remember where § 87(2)(b) was when the EDP was placed in the ambulance. PO Abdalla did not remember interacting or communicating with § 87(2)(b) after he crossed the street. He did not believe that § 87(2)(b) flipped his middle finger at him from across the street. PO Abdalla made the decision to issue § 87(2)(b) the summons for jaywalking once he saw § 87(2)(b) cross the street into an active lane. § 87(2)(b) was also issued a summons for disorderly conduct under subsection six for failing to disperse after being told to do so multiple times.

While reviewing § 87(2)(b)’s first video, PO Abdalla stated that he told § 87(2)(b) to step aside because he did not want § 87(2)(b) near the EDP, as EDP’s become upset easily. PO Abdalla believed it was possible for § 87(2)(b) to agitate the EDP from where he was standing, although he had not done so. While reviewing the second video, PO Abdalla stated that he told § 87(2)(b) to back up again because § 87(2)(b) was still too close to an active crime scene where two

officers were injured (by their own OC spray). When asked where exactly the crime scene was, PO Abdalla said the crime scene was “the whole area,” including the area outside of the building where the crime had taken place. When asked whether anything aside from § 87(2)(b)'s presence in the area constituted interference, PO Abdalla said no. When asked what happened in the seven-minute gap between the second and third videos, PO Abdalla could not state what, if anything, happened between him and § 87(2)(b) during this time. PO Abdalla did not remember whether § 87(2)(b) flipped him the middle finger during that time period. PO Abdalla did not remember why it took him seven minutes to approach § 87(2)(b) after § 87(2)(b) crossed the street. While reviewing the third video, PO Abdalla stated that he did not remember why he said, “Why are you acting disorderly right now, sir,” to § 87(2)(b). After watching the three videos, PO Abdalla stated that he did not believe that § 87(2)(b) ever flipped him the middle finger, and he was unable to identify the specific point when he decided to issue § 87(2)(b) the two summonses.

PO Pacheco noted that her recollection of the incident was not precise. Prior to reviewing § 87(2)(b)'s videos, she stated that when she arrived at the scene, the EDP was being aggressive and was not listening to the officers, but PO Pacheco did not recall what the officers were telling the EDP. PO Pacheco did not know whether the EDP was doing anything physically, raised his voice, or use profanities. The EDP caused a crowd of approximately 10 to 15 people to form on the opposite side of West 47<sup>th</sup> Street. PO Pacheco did not recall whether anything besides the EDP's behavior rendered the situation out of control. § 87(2)(b)'s presence with the officers near the EDP rendered the situation unsafe. PO Pacheco did not see § 87(2)(b) interact with the EDP. PO Pacheco had no independent recollection of anyone being asked to move away from the scene besides § 87(2)(b). PO Pacheco did not recall whether the EDP ever calmed down. At one point, § 87(2)(b) was standing in the middle of West 47<sup>th</sup> Street and was obstructing traffic after the officers had asked him to cross the street. PO Pacheco told § 87(2)(b) to step back and move across the street to ensure his and the officers' safety because the EDP was not calming down and was “out of control.” § 87(2)(b) crossed to the south side of West 47<sup>th</sup> Street but eventually returned to the north side, where the officers were. PO Pacheco only recalled this one instance when § 87(2)(b) left and returned to the scene. PO Pacheco did not know whether § 87(2)(b) ever flipped his middle finger at PO Abdalla or anyone else.

While reviewing § 87(2)(b)'s first video, which shows the EDP standing silently and still while in handcuffs, PO Pacheco stated that she did not know whether the moment in this video was before or after the EDP was behaving in an aggressive manner. PO Pacheco opined that § 87(2)(b) was too close to the EDP when PO Abdalla ordered him to move away because the EDP could “go out of control” at any point. § 87(2)(b) did nothing else to create an unsafe or hazardous condition besides standing too close to the EDP. PO Pacheco stated that § 87(2)(b) was still an unsafe distance from the EDP when the EDP was being placed in the ambulance because the EDP could “lose control at any point,” which happens frequently, and the officers did not know what § 87(2)(b) was carrying. While reviewing § 87(2)(b)'s second video, in which the EDP is already in the ambulance, PO Pacheco stated that § 87(2)(b) was creating an unsafe condition because the officers had their backs towards him and he was standing with them while he was filming. PO Pacheco did not recall § 87(2)(b) standing in the middle of the street at any point besides at the end of this video. PO Pacheco did not recall exactly when she told § 87(2)(b) to move away, but she noted that she did so, that § 87(2)(b) may have returned to the north side of West 47<sup>th</sup> Street, and that she may have issued this command after the end of this video. While reviewing § 87(2)(b)'s third video, which begins with § 87(2)(b) on the south side of West 147<sup>th</sup>



Street, PO Pacheco explained that § 87(2)(b) had approached the officers again and stood in the middle of the street immediately prior to this, and that this was not captured on any of § 87(2)(b)'s videos. PO Pacheco stated that she was not present when § 87(2)(b) allegedly raised his middle finger at PO Abdalla and when PO Abdalla exited his car, as alleged by § 87(2)(b) on the video, and she did not know what § 87(2)(b) was talking about.

New York State Penal Law article 240, section 20, subsection 6 states, “A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse.” According to Patrol Guide Procedure 208-03, when a police officer detains a person in a public area, persons who are in the area are permitted to observe the officer’s actions, and these persons may not be arrested or detained for videotaping the encounter “unless the safety of officers or other persons is directly endangered, or the officer reasonably believes they are endangered.” See Board Review 12.

In § 87(2)(b)'s first video, the EDP is restrained in handcuffs and in the custody of a police officer, who is holding him outside of an ambulance. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

When § 87(2)(b) walked back to the front of § 87(2)(b) the EDP was being placed inside the ambulance, and when the second video begins, the ambulance’s rear doors are closed. PO Abdalla stated that § 87(2)(b)'s presence was preventing the officers from effectively restraining the EDP, and when asked what § 87(2)(b) specifically did that kept him from performing his duties, PO Abdalla stated that because § 87(2)(b) kept returning to the officers, and because there were other individuals present, he did not know whether § 87(2)(b) knew the people around him or whether one of these individuals might attack the officers. PO Abdalla stated that he told § 87(2)(b) to step aside because he did not want § 87(2)(b) near the EDP, as EDP’s become upset easily. PO Abdalla believed it was possible for § 87(2)(b) to agitate the EDP from where he was standing, although he had not done so. While reviewing the second video, PO Abdalla stated that he told § 87(2)(b) to back up again because § 87(2)(b) was still too close to an active crime scene where two officers were injured, and that the crime scene was “the whole area,” including the area outside of the building where the crime had taken place. When asked whether anything aside from § 87(2)(b)'s presence in the area at this time constituted interference, PO Abdalla said no. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) was therefore not guilty of disorderly conduct, as outlined in NYS Penal Law 240.20(6). The § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

Although no other civilians are visible in the video, both § 87(2)(b) and PO Abdalla stated that there was a crowd of civilians gathered outside of § 87(2)(b) and PO Abdalla estimated that there were approximately four to five civilians present. However, PO Abdalla acknowledged that § 87(2)(b) was the only civilian that was asked to move away from the scene. This, in conjunction with the facts that § 87(2)(b) was not causing a disturbance and that the situation was

under control both times § 87(2)(b) was told to move away, suggests that PO Abdalla singled § 87(2)(b) out because he was filming. In § 87(2)(b)'s third video, he could be heard telling PO Abdalla and a bystander that he had just flipped him the middle finger. PO Abdalla did not recall what happened during the seven minute gap between § 87(2)(b)'s second and third videos. PO Abdalla did not remember whether § 87(2)(b) flipped him the middle finger during that time period. PO Abdalla also did not remember why it took him seven minutes to approach § 87(2)(b) after § 87(2)(b) crossed the street. While reviewing the third video, PO Abdalla stated that he did not remember why he said, "Why are you acting disorderly right now, sir," to § 87(2)(b) at the very beginning of his interaction with § 87(2)(b) on the south side of West 47<sup>th</sup> Street. PO Abdalla was unable to identify the specific point when he decided to issue § 87(2)(b) the two summonses. Although PO Pacheco stated that § 87(2)(b) stood in the middle of West 47<sup>th</sup> Street and blocked traffic during the time between the two videos, § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Squad: 9

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date